

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In the Matter of a Warrant to Search a Certain
E-Mail Account Controlled and Maintained by
Microsoft Corporation

Action Nos. 13-MAG-2814, M9-150

SUPPLEMENTAL DECLARATION OF MICHAEL MCDOWELL

I, **MICHAEL MCDOWELL**, declare as follows:

1. I am a Senior Counsel at the Bar of Ireland, having been called to the Bar in 1974 and to the Inner Bar in 1987. I was Attorney General of Ireland from 1999 to 2002, Minister of Justice, Equality and Law Reform from 2002 to 2007, and Deputy Prime Minister from 2006 to 2007. I left government service in 2007, and I am now in practice as a Senior Counsel in the Irish High and Supreme Courts.

2. I have been engaged by Microsoft as an independent expert to opine on the issues raised in this case. This declaration supplements my declaration of 5 June 2014, and provides additional information in respect of certain statements made by the U.S. Government in its submission of 9 July 2014.

3. Specifically, on page 25 of its submission, the U.S. Government states that an “MLAT request typically takes months to process.” This statement is not accurate with respect to MLAT requests processed by the Irish government.

4. The amount of time the Irish government requires to process an MLAT request (*i.e.*, the time from when the request is made until the evidence is received by the foreign MLAT party) depends upon the type and urgency of the request. Some requests, such as a request for a deposition, can take months from start to finish. Other requests, such as requests

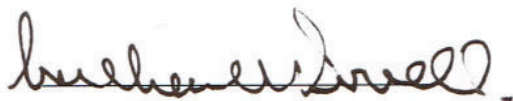
for digital evidence, are generally fulfilled within a matter of weeks. Furthermore, if a request is urgent, the Irish government will process the request more quickly than if it is not urgent. If necessary, urgent requests can be processed in a matter of days.

5. In addition, the Criminal Justice (Mutual Assistance) Act, 2008, mandates procedures to ensure that evidence (most often bank accounts but also digital evidence) sought by an MLAT request is not destroyed or altered while the request is being processed. Where a foreign government requests that Ireland preserve (or “freeze”) digital evidence located in Ireland, the Irish Department of Justice and Equality (acting as Ireland’s Central Authority) can apply to the Irish High Court for a freezing cooperation order. This freezing cooperation order prohibits any person with possession of the evidence from altering or destroying it, and may also authorize the An Garda Síochána — Ireland’s national police service — to seize property subject to the order to prevent it from being removed, altered, or destroyed. Ireland generally processes requests for freezing cooperation orders within 24 hours from when they are made.

* * *

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 23rd July 2014.

Signed: 
Michael McDowell